Supreme Court, U.S.
FILED
JUN 4 - 2007
OFFICE OF THE CLERK

(3)

No. 06-1474

IN THE

# Supreme Court of the United States

SHERROD YOUNG,
*Petitioner*,

v.

UNITED STATES OF AMERICA,
*Respondent*.

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit**

## REPLY MEMORANDUM IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

MATTHEW M. SHORS
(*Counsel of Record*)
DAVID J. L. MORTLOCK
GEOFFREY M. WYATT
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300

*Counsel for Petitioner*

## REPLY BRIEF OF PETITIONER

Although the Government suggests that the Court should hold the petition pending its decisions in *Claiborne v. United States* No., 06-5618,[1] and *Rita v. United States*, 06-5754, the Government offers no basis for denying immediate plenary review of the question presented. In seeking rehearing and rehearing *en banc* before the D.C. Circuit, the Government recently argued that the question presented in this petition constitutes "an issue of exceptional importance." Pet. for Reh'g at 6, *United States v. Pickett*, No. 05-3179 (D.C. Cir. filed Apr. 30, 2007). The D.C. Circuit's unanimous denial of rehearing and rehearing *en banc* cements the split among the circuits on this issue. *See Pickett*, No. 05-3179 (D.C. Cir. filed May 21, 2007) (orders denying rehearing and rehearing *en banc*) (App. 1a-2a). There is therefore an even stronger case for plenary review now than there was when Mr. Young filed the petition.

There is no need or justification for further percolation of the question presented. The ten courts of appeals to address the question have reached fundamentally conflicting conclusions. Thousands of sentencing cases are presently subjected to the competing and confused interpretations of those courts. The Court's resolution of the question presented is therefore not only warranted but essential.

The Government also effectively concedes that this case presents the Court with an ideal vehicle to provide lower federal courts with much needed guidance on the question presented. The decision below holds that district courts lack authority to deviate from Guidelines-range sentences for crimes involving crack cocaine on the basis of the

---

[1] Earlier today, the Court vacated as moot the Eighth Circuit's decision in *Claiborne*. (App. 3a.) That dismissal does not change the fact that the recurring question the petition presents has fundamentally divided the lower courts and warrants plenary review.

crack/powder sentencing disparity even when those sentences are "greater than necessary" to achieve the sentencing goals of 18 U.S.C. § 3553(a). The petition thus cleanly presents this question of exceptional importance.

Because the Government "waives any further response to the petition," Opp. 1 n. *, the Court should grant the petition. At the very least, and as the Government concedes, the Court should hold the petition pending its decision in *Rita*.

Respectfully submitted,

MATTHEW M. SHORS
(*Counsel of Record*)
DAVID J. L. MORTLOCK
GEOFFREY M. WYATT
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
(202) 383-5300

*Counsel for*
*Petitioner Sherrod Young*

June 4, 2007

# APPENDIX

**APPENDIX A**

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

| | | |
|---|---|---|
| **No. 05-3179** | | **September Term, 2006** |
| UNITED STATES OF AMERICA, | ) | |
| Appellee | ) | 01cr00181-01 |
| vs. | ) | Filed on: May 21, 2007 |
| LORENZO PICKETT, | ) | |
| Appellant | ) | |

**BEFORE**: GINSBURG, Chief Judge, and SENTELLE, HENDERSON, RANDOLPH, ROGERS, TATEL, GARLAND, BROWN, GRIFFITH, and KAVANAUGH, Circuit Judges

**ORDER**

Upon consideration of appellee's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

**ORDERED** that the petition be denied.

**Per Curiam**

FOR THE COURT: Mark J. Langer, Clerk

BY: _____
Michael C. McGrail
Deputy Clerk

## APPENDIX B

## IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 05-3179** **September Term, 2006**

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | ) | |
| Appellee | ) | 01cr00181-01 |
| vs. | ) | Filed on: May 21, 2007 |
| LORENZO PICKETT, | ) | |
| Appellant | ) | |

**BEFORE**: GINSBURG, Chief Judge, and RANDOLPH and ROGERS Circuit Judges

**ORDER**

Upon consideration of appellee's petition for rehearing filed April 30, 2007, it is

**ORDERED** that the petition be denied.

**Per Curiam**

FOR THE COURT: Mark J. Langer, Clerk

BY: _____
Michael C. McGrail
Deputy Clerk

# APPENDIX C

## SUPREME COURT OF THE UNITED STATES

No. 06-5618

MARIO CLAIBORNE, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[June 4, 2007]

PER CURIAM.

The Court is advised that the petitioner died in St. Louis, Missouri, on May 30, 2007. The judgment of the United States Court of Appeals for the Eighth Circuit is therefore vacated as moot. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950).

*It is so ordered.*